IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8929 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHIPAT TUKARAM KORPEA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8929 of 1998

MRS DT SHAH for Petitioner No. 1

MR PD BHATE, AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 28/01/2004

ORAL JUDGEMENT

1. In this petition grievance has been made by the petitioner that despite revision of pay-scale from Rs.775-1025 to Rs.1150-1500, petitioner is not granted

the revised scale. It appears that petitioner originally was appointed as Ward Boy Servant on 8th March, 1967 and subsequently he was promoted as Operation Theatre Assistant and since then he had been serving as the Operation Theatre Assistant in the Civil Hospital at Surat. It is his say that in the year 1987 the new pay-scale was introduced with the revision of the earlier pay-scale and for the Operation Theatre Assistant the revised pay-scale at Rs.1150-1500 was fixed. However, the said pay-scale was not granted to the petitioner and he was paid salary on the basis of the old scale. It is further stated in the petition that his co-employees had filed petitions before this Court making the said grievance. They were Special Civil Application No. 8909 of 1998 and its cognate matters.

2. Mrs. D.T. Shah, learned advocate appearing for the petitioner states that Special Civil Application No. 8909 of 1998 and its cognate matters have been decided by the learned Single Judge of this Court [Coram : S.K. Keshote, J.] vide judgment dated 5th May, 1999, which has been later on confirmed in the Letters Patent Appeal No. 904 of 1999 and its cognate appeals vide judgment dated 13th February, 2000. She has also produced the xerox copies of these judgments for Court's perusal, which are ordered to be taken on record of this petition. In the earlier decision this Court has held that the petitioner, who is Operation Theatre Assistant is entitled to receive the revised pay-scale at Rs.1150-1500, which has come into effect since 1/1/1986. However, the learned Single Judge has ordered that the petitioner shall be entitled to actual benefits of the revision of the pay-scale from the date of filing of the petition. It appears that the learned Single Judge's judgment, to the extent it made the benefit available to the petitioners from the date of filing of the petition, was challenged by way of Letters Patent Appeal, but the appeal was dismissed and the decision of the learned Single Judge was confirmed.

3. In view of the aforesaid, this petition is also required to be decided on the same line. It is, therefore, held that the petitioner will be entitled to receive the revised pay-scale of the Operation Theatre Assistant i.e. Rs.1150-1500 and further revision of his pay in the pay-scale as revised as per the recommendations of 5th Pay Commission from the date of which the same was given effect for the government employees in this State. However, he will actually be entitled to receive this benefit of both the revised scales from the date of filing of the petition with further direction that his pay in the revised pay scale

be notionally arrived at on the date of filing of this Special Civil Application. Accordingly, this petition stands disposed of in the aforesaid terms with no order as to costs.

It is stated that because of the pendency of this petition the petitioner, on his retirement, has not been paid the retiral dues. It is, therefore, clarified that the respondent shall release the same at the earliest upon receipt of the writ of this petition and in any case not later than two months thereof.

[AKSHAY H. MEHTA, J.]

* Pansala.